

**From:** jlc@sdrc.com@inetgw  
**To:** Microsoft ATR  
**Date:** 1/24/02 4:58pm  
**Subject:** Microsoft Settlement

I am writing to vehemently object to the proposed settlement between the U.S. Department of Justice, et. al. v. Microsoft. My reasons for objecting to this proposed settlement strongly reflect those expressed by Matthew Szulik, CEO of Red Hat, Inc. in his testimony to Congress on December 12, 2001 (<http://www.redhat.com/opensource/speech2.html>) and those of Ganesh Prasad, as outlined in an open letter available at LinuxToday ([http://linuxtoday.com/news\\_story.php3?ltsn=2002-01-02-002-20-OP-MS](http://linuxtoday.com/news_story.php3?ltsn=2002-01-02-002-20-OP-MS)).

I object to this proposed settlement because:

1. It fails to deny Microsoft the fruits of its statutory violations, including the use of those gains to mount its legal defense.

The proposed settlement includes no punishment for Microsoft's repeated violations of the law; it contains only (weak and ineffective) mechanisms to attempt to prevent future wrongdoing.

No monetary penalty of any kind is imposed upon Microsoft by this proposed settlement. Microsoft would not have made its huge profits without the benefit of its illegally maintained monopoly; therefore, a large part of its current wealth is illegally earned.

A long-established principle holds that convicted criminals should not be able to use ill-gotten gains to pay for their legal defense. Yet even after Microsoft's conviction, it is still using its nearly limitless wealth to defend itself while several of the plaintiff States are agreeing to settle the case because they are running out of funds to pursue it.

Has fairness and justice in America been totally replaced by the principle that "those with the biggest pile of cash win"?

2. It fails to ensure that competition within the computing industry will be restored, and in fact, contains provisions which will hamper one of Microsoft's only remaining viable competitors: the open source software community.

The terms of this proposed settlement and the proposed mechanisms for ensuring Microsoft's adherence to them are so weak and vague as to be laughable. Massachusetts Attorney General was overly optimistic when he said "Five minutes after any agreement is signed with Microsoft, they'll be thinking of how to violate the agreement." You can be sure that they will not wait that long. Microsoft's survival depends upon their predatory and illegal business practices: I have no doubt that

they have already developed a strategy for conducting their post-settlement business that will push the terms of the proposed settlement to their limits, and then proceed right through its (very large) loopholes. With their huge cash reserves and this flimsy proposed settlement, Microsoft has little to fear from their already vanquished commercial competitors (nor, obviously, from the DOJ).

Several provisions of the proposed settlement contain terms which will regulate Microsoft's business relationship with other companies, particularly with respect to licensing. However, these provisions are worded in such a way that they pertain solely to corporate or other commercial entities. They will not hamper Microsoft's ability to retaliate against developers of open source projects, which are their only viable competition. Most open source projects are created by volunteers who have no corporate structure for entering into license agreements nor the financial resources required.

Microsoft is deeply concerned about the competitive threat presented by open source software and has identified it as the single biggest threat to their business. However, there are no terms in this proposed settlement that will provide developers of open source software with the same protections as commercial entities. This is not surprising, since the proposed settlement appears to have been custom tailored to meet Microsoft's own specifications.

3. It was an agreement reached during a period of national tragedy for the purpose of political expediency, not for ensuring an adequate remedy.

This proposed settlement is clearly the product of political expediency and is not commensurate with the outcome of the trial and appeals process. Microsoft was convicted for illegally maintaining its monopoly and that conviction was upheld on appeal. Yet the DOJ has agreed to a proposed settlement that is much more favorable to Microsoft than the one that was on the table before it was convicted.

Federal District Court Judge Kollar-Kotelly pressed the DOJ and Microsoft to settle the case, saying a quick resolution of the case had become more important "in light of recent tragic events affecting our nation." While the events of September 11 were truly tragic, they do not justify a mild slap on the wrist for a convicted criminal enterprise that has used illegal business practices to wrong millions of consumers, destroy innumerable competitors, and destroy efficiency and innovation within the computing industry. How many other convicted criminals have received a such a mild sentence since September 11 on the grounds that "times are tough"?

Microsoft continually argues that they should be free to innovate, but in reality monopolies do not do so. Economics teaches that monopolies are always bad: they stifle innovation, they do not create it. It is

not in their interest to do so, as they have already captured the market.

Microsoft has therefore already negatively affected the economy. Ending its monopoly will undoubtedly cause short-term turmoil with the nation and its economy, but it is the only way that true innovation and competition within the computing industry can be restored.

A proper settlement for this case must be commensurate with the clear-cut findings of the trial and appeals, and must assertively address consumer's and competitor's interests. The terms of the current proposed settlement address only the issue of preventing future inappropriate behavior by Microsoft. The provisions of the current proposed settlement are so weak and vague that they are unlikely to impair Microsoft's illegally maintained dominance of the computing industry in any material way.

The proposed settlement does not address: (1) reimbursing consumers for the excess profits Microsoft has earned as a result of its illegal behavior; (2) reparations by Microsoft to restore competition and choice within the marketplace; or (3) punitive damages over and above reimbursement and reparations to serve as a warning to future monopolists.

The proposed settlement is fatally flawed and must be rejected as not being in the public interest.

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